IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 4472 of 2007(G)

OS.126/2006 of MUNSIFF COURT, PERUMBAVOOR
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PETITIONER:

P.H. MUHAMMED IMTHIAS, AGED 27,
S/O. LATE N.K. HASHIM, MILL HOUSE,
PERUMBAVOOR KARA, PERUMBAVOOR VILLAGE.

BY ADV. SRI.A.BALAGOPALAN
SRI.BASIL MATHEW

RESPONDENTS:

C.K. IBRAHIM, AGED 65,
CHIRAKKAKUDY HOUSE, ALLAPPRA KARA,
PERUMBAVOOR VILLAGE.

ADDL. RESPONDENTS 2 TO 7 IMPLEADED .

2. ISHA IBRAHIM, W/O. LATE C.K.IBRAHIM,
CHIRAKKAKUDY HOUSE, ALLAPRA KARA,
PERUMBAVOOR VILLAGE.

3. C.E. MOHAMMED, SON OF DO. DO. IN DO. DO.

4. C.E. KAREEM, SON OF DO. IN DO.

5. C.E. AMEEN S/O. DO. IN DO. DO.

6. C.E. SIMI, DAUGHTER OF DO. RESIDING IN DO. DO.

ARE IMPLEADED AS ADDITIONAL RESPONDENTS AS PER ORDER DT. 13.8.07 IN IA. 10284/07.

BY ADV. SRI.P.B.KRISHNAN
SRI.K.JAYAKUMAR
SRI.S.V.BALAKRISHNA IYER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, ALONG WITH WPC NO. 4490 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.4472/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE IA. NO.768/2006 ON THE FILE OF MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P2:- COPY OF THE COUNTER AFFIDAVIT IN IA. 768/06 ON THE FILE OF MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P3:- COPY OF THE ORDER IN IA. NO.702/2006 DT. 3.4.06 PASSED BY THE MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P4:- COPY OF THE ORDER IN IA. NO.768/06 DT. 3.4.06 PASSED BY THE MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P5:- COPY OF THE JUDGMENT IN CMA. 39/06 PASSED BY ADDITIONAL DISTRICT COURT NORTH PARAVUR DT. 28.11.06.

/TRUE COPY/

P.S. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) Nos. 4472 & 4490 OF 2007

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Dated this the 16th day of November 2007

JUDGMENT

These two writ petitions are preferred against the judgment of the Addl.District Judge, N.Paravur in C.M.A.Nos.38 & 39 of 2006. The said C.M.As arise out of the order of the Munsiff's Court, Perumbavoor in I.A.No.768 of 2006 in O.S.No.126 of 2006. The brief facts necessary for the disposal of the writ petitions are stated as follows:

2. The suit is one for permanent injunction to restrain the defendant therein from interfering with the peaceful possession of the plaint schedule property and when the plaintiff attempted to effect repairs to the property there was an attempted obstruction. Hence the suit.

3. The plaintiff would contend that he had obtained property by virtue of a settlement deed of the year 2005. On the other hand, the counter petitioner would contend that he is a tenant and the plaint schedule property was taken on rent by the counter petitioner 35 years back from the grandfather of the petitioner and he is conducting business of cattle feed in the said shop room. There is also a case for him that he had paid an amount of Rs.36,000/- and thereafter has become the owner in possession of the

premises. The suit is one for injunction and it is the duty of the plaintiff to prove that he was in possession on the date of the suit. There cannot be any dispute that the property belonged to the predecessor-in-interest of the plaintiff. The defendant would contend that on the strength of the injunction issued by the court in the case, the plaintiff has removed the lock and key and had forcibly taken possession of the premises and therefore he has requested the court by virtue of an interim application to restore the possession, which has been forcibly taken away by the plaintiff.

4. The crucial question to be decided is whether there are sufficient materials to show that the plaintiff was in actual possession of the premises as on the date of suit or whether it is probable to believe the case set up by the defendant. Immediately after the issuance of a Commission, the Commissioner did not visit the property on that day itself. He visited the property on 20.3.2006. The plaintiff opened the lock. The Commissioner entered into the premises and he was able to see about 25 plastic bags and there was also cattle feed in some of them and the cattle feed had fallen there as well. The Commissioner was able to see the shutter and other things where the name of the cattle feed, etc. are inscribed. The Commissioner reports that the shutter is painted in yellow colour and in read colour 'Narmada' is written and in blue colour 'kalitheetta'. He was able

to see in black letters "oru ceekay feed ulppannam". He also reports that the shutter is not a recently fixed one. Again the Commissioner inspected the property in the presence of the defendant as well. He is able to see the things what he had seen on the previous occasion and would also report that there was no electricity connection at that time. There is no case for the plaintiff that at any point of time he had been conducting cattle feed business.

5. Men may lie, but circumstances will never lie. The presence of the advertisement of cattle feed coupled with the availability of cattle feed stocked in the premises at least to a small quantity are all indicative of the fact that the person in possession is a person who deals with cattle feed or dealt with the cattle feed. The plaintiff has no such case, but the defendant has definitely such a case. So it is an indicator to prove that what the plaintiff says is not correct and what the defendant says is more probable. The documents produced on the side of the defendant are Exts.B1 to B9. Ext.B1 is alleged to be a notice sent by the mother to the defendant to vacate the premises on termination of the lease for the purpose of conducting business by the present plaintiff. The court below held that at that stage a notice cannot be looked into for the reason that it has got a suspicious appearance. Learned counsel for the respondent would contend

that the notice contains the signature of the Advocate in tact and it is true that ink is spread over in some portion and that shall not be a ground to reject the notice as such. Exts. B2 to B9 documents would show that the defendant had paid tax to this premises. If the defendant is a person who has nothing to do with the premises the question of making payment to the Government for occupation of that premises would never arise.

6. The trial court brushed aside those receipts holding that anybody can pay the tax. But unless a person is interested in the property under ordinary human conduct, one will not do it and there is no case for the plaintiff that the defendant was scheming to get that property, has created document for the said purpose. So, the Commissioner's report coupled with Exts.B1 to B9 documents probabilise the case of the defendant rather than the case of the plaintiff. The only positive factor that can be argued on the side of the plaintiff is that when the Commissioner came, it was he who opened the lock and therefore it indicates his control over the premises. The defendant has got a definite case that on the strength of the injunction order obtained on 18.3.2006, the plaintiff has forcibly removed the lock which had been put by him and therefore, it cannot be taken as a ground to prove the possession of the plaint. It appears to be true in the back drop of the materials which I had referred to earlier.

7. In order to entitle the plaintiff to get an injunction he has to prove at least the prima facie case, balance of convenience and irreparable injury. There are no convincing materials to prove it whereas there are at least satisfactory materials available before court to show that the defendant had been exercising act of possession over the property and therefore he is having a better case. So far as the interim mandatory injunction is concerned, when there is materials to show that the plaintiff was not in possession of the suit premises on the date of the suit and there are indications and materials to show that the defendant was in possession, then when the defendant is forcibly dispossessed on the basis of an order of the court, i.e. under the umbrella of a temporary injunction, the court is duty bound to restore the person, who was in possession on the date of the institution of the suit.

Therefore, I find that the lower appellate court had considered the matter in the correct perspective and had arrived at a decision which does not call for any interference. Therefore, the order under challenge is confirmed and the writ petitions are dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-